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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

[FDMS No. NARA-16-0003; NARA-2016-018]

RIN 3095-AB90

Fees

AGENCY: National Archives and Records Administration (NARA).

ACTION: Direct final rule.

SUMMARY: The National Archives and Records Administration (NARA) is making a minor administrative revision to its fees regulation to set a time limit for requesting refunds of reproduction fees.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further action, unless NARA receives adverse comments by [INSERT DATE 20 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If NARA receives an adverse comment, it will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: You may submit comments, identified by RIN 3095-AB90, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* Regulation_comments@nara.gov. Include RIN 3095-AB90 in the subject line of the message.
- *Fax:* 301-837-0319. Include RIN 3095-AB90 in the subject line of the fax cover sheet.

- *Mail* (for paper, disk, or CD-ROM submissions. Include RIN 3095-AB90 on the submission): Regulations Comment Desk (External Policy Program, Strategy & Performance Division (SP)); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001
- *Hand delivery or courier*: Deliver comments to front desk at the address above.

Instructions: All submissions must include NARA's name and the regulatory information number for this rulemaking (RIN 3095-AB90). We may publish any comments we receive without changes, including any personal information you include.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, by email at regulation_comments@nara.gov, or by telephone at 301-837-3151.

SUPPLEMENTARY INFORMATION:

Background

NARA is authorized by 44 U.S.C. 2116(c) to charge reproduction fees when it reproduces documents for non-Federal individuals or entities. This includes official reproductions with the Archives seal, reproductions of archival holdings, and reproductions of operational records. The statute authorizes NARA to recoup its costs, equipment fees, and similar expenses, and to retain the fees as part of the National Archives Trust Fund. NARA promulgated regulations at 36 CFR 1258 to notify users of the fee structure and processes. Among these regulations is a section addressing refunds of these fees (36 CFR 1258.16). It is this provision that we are revising with this rulemaking.

Due to various factors, it is occasionally difficult for us to make a legible reproduction, particularly of old documents. We notify customers if we anticipate the reproduction will have questionable legibility, and request the customer's approval to proceed with the reproduction –

and the fee charges. As a result, we do not provide refunds except in special cases; primarily if we have somehow processed an order incorrectly or it contains errors. However, the regulation's refund provision did not include a refund cut-off period after which a person who ordered a reproduction could no longer request a refund. Customers could request refunds for orders that were years old, which has occurred in several instances. We had no recourse but to process the refunds, which is not a reasonable business practice for orders that are multiple years old. This also caused a significant administrative burden, as NARA had discarded records for some of these orders at the end of their routine business life, in accord with our agency's official records schedule. For example, under records schedule 1807-2, orders made on our online ordering system (SOFA) are destroyed once they are one year old. A refund request five years after the customer received the reproduction not only is not reasonable, but occurs four years after we destroyed records of the order, making it impossible for us to determine if the customer was notified and approved the reproduction, whether there really was an error or something incorrect about the order, and similar issues.

As a result of these difficulties with refund requests on old orders, we are now revising 36 CFR 1258.16 to set a refund time limit. Customers will have four months from the order date in which to request a refund.

Regulatory analysis

Review under Executive Orders 12866 and 13563

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), and Executive Order 13563, Improving Regulation and Regulation Review, 76 FR 23821 (January 18, 2011), direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net

benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This proposed rule is not “significant” under section 3(f) of Executive Order 12866 because it merely modifies the window of opportunity in which customers may request refunds of reproduction fees. The Office of Management and Budget (OMB) has reviewed this regulation.

Review under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*)

This review requires an agency to prepare an initial regulatory flexibility analysis and publish it when the agency publishes the proposed rule. This requirement does not apply if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). NARA certifies, after review and analysis, that this proposed rule will not have a significant adverse economic impact on small entities because it merely modifies the window of opportunity in which customers may request refunds of reproduction fees.

Review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This proposed rule does not contain any information collection requirements subject to the Paperwork Reduction Act.

Review under Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999)

Review under Executive Order 13132 requires that agencies review regulations for federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, prepare a Federal assessment to assist senior policy makers. This proposed rule will not have any direct effects on State and local governments within the meaning of the Executive Order. Therefore, the regulation requires no federalism assessment.

List of Subjects in 36 CFR Part 1258

Archives and records.

For the reasons stated in the preamble, NARA amends 36 CFR part 1258 as follows:

PART 1258---FEES

1. The authority citation for part 1258 remains as follows:

Authority: 44 U.S.C. §§ 2116(c) and 2307.

2. Revise §1258.16 to read as follows:

§ 1258.16 What is NARA's refund policy?

Due to various factors, it is occasionally difficult for NARA to make a legible reproduction. NARA will notify customers and ask for approval to proceed if we anticipate a reproduction of questionable legibility. As a result, NARA does not provide refunds except in special cases. If a customer requests a refund, we review the order to determine if we properly notified the customer of the questionable nature of the original and if the product is a true representation of the original. If the product is a true representation of the original, we will not issue a refund. If you feel we processed your order incorrectly or it contains errors, please contact us within 120 days of your order date to have your issue verified. Once we verify the issue, we will correct the error and resend the documents. If we cannot correct the error, you will receive a refund.

Dated: March 20, 2016

David S. Ferriero

Archivist of the United States.

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